

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 382, As Amended in the Senate

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO INCOME TAX; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3006C, IDAHO CODE, TO PROVIDE DEFINITIONS OF THE TERMS "PASS-THROUGH ENTITY" AND "OWNER OF INTEREST IN A PASS-THROUGH ENTITY"; AMENDING SECTION 63-3022L, IDAHO CODE, TO REVISE THE MANNER IN WHICH THE INCOME OF PASS-THROUGH ENTITIES INCOME IS REPORTED AND PAID; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3036B, IDAHO CODE, TO PROVIDE A SYSTEM OF BACKUP WITHHOLDING FOR INDIVIDUALS WHO ARE OWNERS OF PASS-THROUGH ENTITIES OR BENEFICIARIES OF A TRUST OR ESTATE WHO DO NOT ELECT TO HAVE THEIR INCOME TAXES PAID ON THE ENTITY'S RETURN; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3006C, Idaho Code, and to read as follows:

63-3006C. PASS-THROUGH ENTITY. The term "pass-through entity" as used in this chapter includes a partnership, as defined in section 63-3006B, Idaho Code, a limited liability company taxed as a partnership under section 63-3006A, Idaho Code, an S corporation required to file a return under section 63-3030(4), Idaho Code, or a trust or estate required to file a return under section 63-3030, Idaho Code. An "owner of an interest in a pass-through entity" includes the shareholders of a corporation, the members of a limited liability company and partners of a partnership.

SECTION 2. That Section 63-3022L, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022L. INDIVIDUALS WHO ARE OFFICERS, DIRECTORS, ~~SHAREHOLDERS, PARTNERS OR MEMBERS OF A CORPORATION OR PARTNERSHIP~~ OWNERS OF AN INTEREST IN A PASS-THROUGH ENTITY OR BENEFICIARIES OF A TRUST OR ESTATE. (1) Individuals who are officers, directors, ~~shareholders, partners or members of a corporation or partnership~~ or owners of an interest in a pass-through entity, as defined in section 63-3006C, Idaho Code, transacting business in Idaho or who are beneficiaries of a trust or estate with income taxable in Idaho may elect to have Idaho tax relating to income described in subsection (2) of this section reported and paid by the ~~corporation, partnership, trust or estate~~ pass-through entity. Income subject to the election in this subsection shall be taxed at the rate applicable to corporations. ~~The election shall be made on the return of the corporation, partnership, trust or estate from which the income is received.~~ The election in this section is

not available to an individual who ~~has Idaho taxable income in addition to income described in subsection (2) of this section~~ is an Idaho resident.

(2) The election in subsection (1) of this section applies to:

(a) Wages, salary and other compensation paid by the ~~corporation, partnership, trust or estate~~ pass-through entity to such officers, directors, ~~shareholders, partners, members~~ owners of an interest in a pass-through entity or beneficiaries to the extent the compensation is Idaho taxable income of the individual to whom it is paid; and

(b) The share of any income, loss, deduction or credit of ~~an S corporation, partnership, trust or estate~~ a pass-through entity required to be included on such ~~shareholder's, partner's, member's or beneficiary's~~ individual's Idaho return.

~~(c) When the gross income attributable to an individual under paragraphs (a) and (b) of this subsection (2) is less than the filing requirement of the individual under section 63-3030, Idaho Code, the income is not income under this subsection.~~

(3) The election in subsection (1) shall be made at the time and in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the taxable year. A new election may be made each year. The state tax commission may, by rule, provide for continuing elections or for the renewal of elections or both.

(4) If no election is made and an officer, director, shareholder, partner, member, or beneficiary of a corporation, partnership, trust or estate transacting business in Idaho fails to file an Idaho income tax return reporting all or any part of the items described in subsection (2) of this section or fails to pay any tax due thereon, such corporation, partnership, trust or estate shall be liable for tax on such items at the rate applicable to corporations under subsection (1) of this section, the pass-through entity shall withhold taxes as required in section 63-3036B, Idaho Code.

~~(4) The provisions of this section shall not apply to a corporation, other than an S corporation, with less than fifty percent (50%) of its income taxable within this state.~~

SECTION 3. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3036B, Idaho Code, and to read as follows:

63-3036B. PASS-THROUGH ENTITIES -- BACKUP WITHHOLDING. (1) A pass-through entity, as defined in section 63-3006C, Idaho Code, that is transacting business in Idaho during a taxable year shall withhold tax as prescribed in this section.

(2) For each individual for whom withholding is required under subsection (4) of section 63-3022L, Idaho Code, the pass-through entity shall withhold tax on any actual distributions of funds from income described in subsection (2) of section 63-3022L, Idaho Code, at the highest marginal rate applicable for the taxable year under section 63-3024, Idaho Code.

(3) A pass-through entity is not required to withhold taxes under this section:

(a) In regard to an individual who is a resident of Idaho as defined in section 63-3013, Idaho Code; or

1 (b) In regard to an individual who makes a timely election under section
2 63-3022L, Idaho Code, to have the individual's tax reported and paid on
3 the pass-through entity's return; or

4 (c) Withholding is not required pursuant to a rule adopted under this
5 section.

6 (4) A pass-through entity that is required to withhold tax under
7 this section shall file a withholding return with the state tax commission
8 setting forth the amount of income described in subsection (2) of section
9 63-3022L, Idaho Code, the amount of tax withheld under this section and any
10 other information required by the commission. The return shall be filed
11 with the commission on the form and taxes withheld under this section shall
12 be paid to the commission in the time and manner prescribed by rules of the
13 commission. To the extent the commission finds practicable, the rules shall
14 generally conform to the requirement of section 63-3035, Idaho Code.

15 (5) A pass-through entity that is required to withhold tax under the
16 provisions of this section shall furnish a statement to each individual on
17 whose behalf tax is withheld. The statement shall state the amount of tax
18 withheld on behalf of the individual for the taxable year of the pass-through
19 entity. The statement shall be made on a form prescribed by the commission
20 and shall contain any other information required by it.

21 (6) A pass-through entity is liable to this state for amounts of tax
22 required to be withheld and paid under the provisions of this section. A
23 pass-through entity is not liable to an officer, director, or individual
24 owner of an interest in the pass-through entity for amounts required to
25 be withheld under the provisions of this section that were paid to the
26 commission as prescribed in this section. Amounts required to be withheld
27 and paid over to the commission under this section that are not withheld or
28 paid over at the time and in the manner required by the provisions of this
29 section shall be a deficiency in tax as defined in section 63-3044, Idaho
30 Code.

31 SECTION 4. This act shall be in full force and effect on and after
32 January 1, 2011.